

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *ex rel.*
BRYAN QUESENBERRY,

Plaintiffs,

v.

BUENA VISTA CONSTRUCTION
GROUP, INC., et al.,

Defendants.

No. 2:20-cv-01826-DAD-JDP

ORDER GRANTING PLAINTIFFS’
REQUESTS TO SERVE DEFENDANTS BY
PUBLICATION

(Doc. Nos. 48, 50)

This matter is before the court on plaintiff-relator Bryan Quesenberry’s motion to serve defendant Fresno Transport, Inc. (“Fresno Transport”) by publication, as well as plaintiff-intervenor United States of America’s request to serve defendants Fresno Transport and Ramanjot Randhawa (“Randhawa”) (collectively, “defendants”) by publication. (Doc. Nos. 48, 50.) For the reasons explained below, the requests to serve by publication submitted by plaintiff-relator and plaintiff-intervenor (collectively, “plaintiffs”) will be granted.

BACKGROUND

On September 10, 2020, plaintiff-relator filed a complaint under seal against multiple defendants, including defendant Fresno Transport, Inc. (“Fresno Transport”), for *qui tam* causes of action brought under the federal False Claims Act (“FCA”), 31 U.S.C. §§ 3729 *et seq.* for allegedly fraudulently obtaining loans under the Payroll Protection Program (“PPP”). (Doc. No

1 1.) On May 18, 2023, plaintiff-intervenor filed a notice of partial intervention, partial declination,
2 and partial consent to dismissal. (Doc. No. 25.) Therein, plaintiff-intervenor stated that it had
3 decided to intervene in this action as to defendant Fresno Transport only and had declined to
4 intervene in this action as to the other defendants (*id.*), who had already been dismissed (Doc. No.
5 29) from this action. On June 9, 2023, the court ordered that the sealing order be lifted and that
6 plaintiff-intervenor serve its complaint upon defendant Fresno Transport, together with the order,
7 within sixty days, and that plaintiff-relator serve its complaint upon defendant Fresno Transport
8 within thirty days. (Doc. No. 30.) On August 15, 2023, plaintiff-intervenor filed a complaint in
9 intervention against defendant Fresno Transport and adding Randhawa—the owner of defendant
10 Fresno Transport—as a defendant-in-intervention. (Doc. No. 39 at 1.)

11 On September 6, 2023, plaintiff-relator filed a motion to serve defendant Fresno Transport
12 by publication. (Doc. No. 48.) On September 15, 2023, plaintiff-intervenor filed its operative
13 first amended complaint in intervention against defendants Fresno Transport and Randhawa.
14 (Doc. No. 49.) On October 2, 2023, plaintiff-intervenor filed its own request to serve defendants
15 Fresno Transport and Randhawa by publication. (Doc. No. 50.) The following day, on October
16 3, 2023, plaintiff-intervenor filed a statement of non-opposition to plaintiff-relator’s motion to
17 serve defendant Fresno Transport by publication. (Doc. No. 51.)

18 LEGAL STANDARD

19 Under the Federal Rules of Civil Procedure, an individual can be served by any of the
20 following:

21 (A) delivering a copy of the summons and of the complaint to the
22 individual personally; (B) leaving a copy of each at the individual’s
23 dwelling or usual place of abode with someone of suitable age and
24 discretion who resides there; or (C) delivering a copy of each to an
agent authorized by appointment or by law to receive service of
process.

25 Fed. R. Civ. P. 4(e)(2). Rule 4 also provides that proper service can be made by “following state
26 law for serving a summons in an action brought in courts of general jurisdiction in the state where
27 the district court is located or where service is made[.]” Fed. R. Civ. P. 4(e)(1).

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1 California law permits service by publication. California Code of Civil Procedure §
2 415.50(a) provides, in relevant part:

3 A summons may be served by publication if upon affidavit it appears
4 to the satisfaction of the court in which the action is pending that the
5 party to be served cannot with reasonable diligence be served in
6 another manner specified in this article and that . . . [a] cause of
action exists against the party upon whom service is to be made or
he or she is a necessary or proper party to the action.

7 “Reasonable diligence” for purposes of § 415.50(a) means the plaintiff “took those steps which a
8 reasonable person who truly desired to give notice would have taken under the circumstances.”

9 *Donel, Inc. v. Badalian*, 87 Cal. App. 3d 327, 333 (1978). When reasonable diligence is shown,

10 [t]he court shall order the summons to be published in a named
11 newspaper, published in this state, that is most likely to give actual
12 notice to the party to be served. If the party to be served resides or
13 is located out of this state, the court may also order the summons to
14 be published in a named newspaper outside this state that is most
likely to give actual notice to that party. The order shall direct that a
copy of the summons, the complaint, and the order for publication be
forthwith mailed to the party if his or her address is ascertained
before expiration of the time prescribed for publication of the
summons.

15
16 Cal. Code. Civ. Proc. § 415.50(b). Upon publication of notice once a week for four consecutive
17 weeks, service is deemed complete. Cal. Gov’t Code § 6064. “Four publications in a newspaper
18 regularly published once a week or oftener, with at least five days intervening between the
19 respective publication dates not counting such publication dates, are sufficient.” *Id.*

20 ANALYSIS

21 Based on the affidavits filed in support of plaintiffs’ respective requests, the court is
22 satisfied that defendants cannot, with reasonable diligence, be served in any manner other than by
23 publication.

24 Catherine Swann, an Assistant United States Attorney (“AUSA”) assigned to work on this
25 case on behalf of plaintiff-intervenor, submitted a declaration in support of plaintiff-intervenor’s
26 pending request. (Doc. No. 50-1.) In her declaration, AUSA Swann states that the California
27 Secretary of State provides an online business search engine to find current, available information

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1 for California corporations and limited liability companies at
2 <https://bizfileonline.sos.ca.gov/search/business>, and a search performed on this site on September
3 28, 2023 revealed that defendant Fresno Transport is suspended. (*Id.* at ¶ 2.) AUSA Swann notes
4 that corporate filings, as well as the two PPP loan applications at issue in this case, identify two
5 addresses associated with defendants Fresno Transport and Randhawa: (1) 299 Fairbanks
6 Avenue, Sanger, California, 93657, and (2) 1711 O Street, Suite 102, Sanger, California, 93657.
7 (*Id.* at ¶ 3.) She also states that Eddings Attorney Service, the process servicer, attempted service
8 on defendants at 299 Fairbanks Avenue, Sanger, California, 93657 on two consecutive dates but
9 was informed by residents at this location that defendant Randhawa no longer resides at that
10 location. (*Id.* at ¶ 4.) AUSA Swann goes on to say that a private investigator (“PI”) retained by
11 the United States was also unable to serve defendant Fresno Transport at either of the two known
12 addresses. (*Id.* at ¶ 5.) The PI attempted to identify working addresses for defendants Fresno
13 Transport and Randhawa by searching numerous proprietary and non-proprietary databases,
14 public information data providers, fictitious business name filings, California Secretary of State
15 records, social media sites, court records, jail records, real property records, and California motor
16 vehicle information. (*Id.*) Despite identifying additional addresses associated with defendants
17 and speaking with residents at those addresses, the PI was unable to effectuate service at those
18 locations. (*Id.*)

19 According to the affidavit filed by plaintiff-relator in support of his pending request, he
20 hired a process server to serve a copy of the complaint and a summons on defendant Fresno
21 Transport at its business and mailing address, 1711 O Street, Suite 102, Sanger, California,
22 93657, and the process server reported that this address is vacant and the doors at this location are
23 locked. (Doc. No. 48 at 4.) Plaintiff-relator further notes that, according to information from
24 <https://bizfileonline.sos.ca.gov/search/business>, defendant Fresno Transport is a suspended entity
25 not in good standing with the California Secretary of State. (*Id.* at 5.) Additionally, plaintiff-
26 relator states that he is unaware of any other means to communicate with or serve defendant
27 Fresno Transport. (*Id.*)

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1 Based on the above, the court determines that plaintiffs have acted with reasonable
2 diligence in attempting to serve defendants, and the court will grant plaintiffs' respective requests
3 to serve by publication. *See* Fed. R. Civ. P. 4(e)(1); Cal. Code Civ. P. § 415.50(a).

4 Plaintiff-intervenor requests that the summons be published in *The Fresno Bee* and the
5 *Mid Valley Times*. Specifically, in her declaration, AUSA Swann states:

6 Research indicates the Mid Valley Times publishes weekly in
7 Sanger, California. The Fresno Bee publishes six days per week in
8 Fresno, California. Sanger is approximately sixteen miles from
9 Fresno California. Given the proximity to Sanger, the United States
intends to publish in both the Mid Valley Times and the Fresno Bee
in the manner required by Cal. Gov. Code § 6064.

10 (Doc. No. 50-1 at ¶ 6.) Plaintiff-relator requests that the summons be published in *The Fresno*
11 *Bee*. (Doc. No. 48-1 at 2.) The court finds that publication in the *Fresno Bee*, a newspaper of
12 general circulation serving Fresno County, California, is the publication most likely to give actual
13 notice to defendants.¹ *See* Cal. Code Civ. P. § 415.50(b).

14 In sum, because plaintiffs have satisfied the requirements for service by publication under
15 California law, the court will grant their respective requests to serve defendants by publication.

16 CONCLUSION

17 For the reasons explained above,

18 1. Plaintiff-relator Bryan Quesenberry's motion to serve defendant Fresno Transport,
19 Inc. by publication (Doc. No. 48) is granted, as follows:

- 20 a. Plaintiff-relator shall publish the summons in *The Fresno Bee* once a week
21 for four successive weeks, with at least five days intervening between the
22 respective publication dates, not counting such publication dates;
23 b. Plaintiff-relator shall have sixty days from the date of this order in which to
24 effect service of defendant Fresno Transport, Inc. by publication, and he

25 ¹ The website of *The Fresno Bee* provides that "The Fresno Bee's circulation area covers
26 approximately 18,000 square miles," and that "[f]or 15 consecutive years, The Bee ranked first in
27 penetration of its Newspaper Designated Market among all California newspapers with more than
28 100,000 circulation." *About the Fresno Bee*, THE FRESNO BEE,
<https://www.fresnobee.com/customer-service/about-us/article19134945.html> (updated Mar. 24,
2023).

shall file a notice of completion of service within seventy days of the date of entry of this order; and

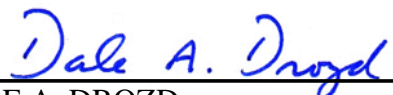
- c. If plaintiff-relator ascertains defendant Fresno Transport, Inc.'s address within the next sixty days, plaintiff-relator shall mail forthwith copies of the summons, complaint, and this order to defendant Fresno Transport, Inc. by ordinary mail;

2. Plaintiff-intervenor United States of America's request to serve defendants Fresno Transport, Inc. and Ramanjot Randhawa (Doc. No. 50) is granted, as follows:

- a. Plaintiff-intervenor shall publish the summonses in *The Fresno Bee* and *Mid Valley Times* once a week for four successive weeks, with at least five days intervening between the respective publication dates, not counting such publication dates;
- b. Plaintiff-intervenor shall have sixty days from the date of this order in which to effect service of defendants Fresno Transport, Inc. and Ramanjot Randhawa by publication, and it shall file a notice of completion of service within seventy days of the date of entry of this order; and
- c. If plaintiff-intervenor ascertains defendants Fresno Transport, Inc. or Ramanjot Randhawa's address within the next sixty days, plaintiff-intervenor shall mail forthwith copies of the summons, complaint, and this order to that defendant by ordinary mail.

IT IS SO ORDERED.

Dated: October 16, 2023


DALE A. DROZD
UNITED STATES DISTRICT JUDGE